IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 167 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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AMRUTBHAI BHOLIDAS PATEL

Versus

STATE OF GUJARAT

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Appearance:

1. Criminal Revision Application No. 167 of 2003

MR YM THAKKAR for Petitioner No. 1

MR SS PATEL APP for Respondent No. 1

MR KB ANANDJIWALA for Respondent No. 1

MR RK SHAH for Respondent No. 1

NOTICE SERVED for Respondent No. 2

MR ABHAYKUMAR P SHAH for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 10/11/2003

ORAL JUDGEMENT

This is a revision application submitted by the petitioner above named challenging an order dated 20/03/03 recorded by the learned Sessions Judge, Ahmedabad (Rural) in Cr.Misc.Appl.No.226/2003 for the transfer of Sessions Case No.85/2000 from the Court of Addl. Sessions Judge (Shri R.M.Parmar) to the Court of any other Addl. Sessions Judge in the same Sessions Division.

2. It appears that the petitioner had applied for the transfer of the said case mainly on the ground that the learned Addl. Sessions Judge had decided certain issues and the said order was set aside by this Court by order dated 17/01/03 passed in Special Criminal Appl.No.727/2002. That the learned Judge is required to deal with and decide the said issues again. That, therefore, it would be in the fitness of things to transfer the said sessions case from the Court of Shri R.M.Parmar to the Court of some another Judge.

3. The learned Judge after hearing the parties, dismissed the said application stating that he had no power to transfer a part heard sessions case from the Court of an Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division. Therefore, the learned Judge dismissed the said application of the petitioner.

4. While dismissing the said application on the aforesaid technicality, the learned Sessions Judge has observed that in view of the aforesaid legal position, the learned Judge did not prefer to express his opinion, regarding reasonable apprehension of prejudices, arising in the mind of the accused person. Therefore, in view of the alleged absence of powers, the application was dismissed by the said Court.

5. Feeling aggrieved by the said order of the trial court, the petitioner has preferred this revision application before this Court u/s.397 read with s.401 of the Code of Criminal Procedure, 1973 (for short, "the Code). It has been contended here that the learned Sessions Judge has committed illegality in holding that he had no power to transfer a part heard sessions case from the Court of an Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division. It has also been argued that the learned Sessions Judge had power u/s.408 of the said Code to transfer the said case, despite the provision made in sub-section 2 of s.409 of the said Code. It has been

further contended before this Court that so far the administrative power of transfer is concerned, the learned Sessions Judge was right in saying that he had no power to transfer a part heard sessions case from the Court of an Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division. However, so far a judicial order at the instance of a party is concerned, the learned Judge had every power and jurisdiction u/s.408 of the Code to transfer a sessions case from the Court of one Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division. That, therefore, the order passed by the learned Sessions Judge and impugned in this revision application is illegal and therefore, deserves to be set aside. The petitioner has, therefore, prayed that the present revision application be allowed and the impugned order dated 20/03/03 recorded by the learned Sessions Judge, Ahmedabad (Rural) in Cr.Misc.Appl.No.226/2003 be set aside. The petitioner has also prayed for the transfer of Sessions Case No.85/2003 from the Court of the learned Addl. Sessions Judge (Shri R.M.Parmar) to the Court of another Addl. Sessions Judge in the same Sessions Division for trial and disposal according to law.

6. On receiving the revision application, Notice was issued and Mr.S V Raju learned Sr.Advocate has argued the matter at length, on the point of power of a Sessions Judge to transfer a part heard sessions case u/s.408 and 409 of the said Code.

7. In support of the said arguments, he has also cited certain decisions to show that a Sessions Judge can transfer a part heard sessions case from the Court of an Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division.

8. However, it is also a matter of record that the petitioner has simultaneously filed Cr.Misc.Appl.No.7715/2003 for the transfer of the aforesaid sessions case from one Court to another. The said application has been dismissed by this Court on merits today, i.e. on 10/11/03.

9. In that view of the matter, the same prayer cannot be agitated before the Sessions Court again on the same issue. It is more so when the issues raised in Cr.Misc.Appl.No.7715/2003 before this Court and the issues raised before the learned Sessions Judge in Cr.Misc.Appl.No.226/2003 are the same. In other words, once this Court has dismissed the aforesaid Criminal

Misc.Application on merits, the learned Sessions Judge would not be in a position to deal with and decide the said issues again, even if the matter is remanded back to the learned sessions Judge for decision on merits.

10. Therefore, even if it is held here that the learned Sessions Judge is clothed with a power to transfer a part heard sessions case from the Court of an Addl. Sessions Judge to the Court of another Addl. Sessions Judge in the same Sessions Division, then also, in view of the aforesaid order of this Court passed today i.e. on 10/11/03, it would not be open to the learned Sessions Judge to deal with and decide the said issues again. Therefore, once it is found that the issues have been dealt with and decided by this Court in Cr.Misc.Appl.No.7715/2003 and when the said issues cannot be raised, dealt with and decided by the learned Sessions Judge even if the matter is remanded to him, then in that case, it could be an unscientific exercise, in futility, to decide the aforesaid aspects of the case as to whether it would be open for a Sessions Judge to transfer a part heard case from the Court of an Addl. Sessions Judge to any other Judge in the same Sessions Division u/s.408 of the said Code and if s.409(2) of the said Code would not stand as an obstacle in the said way of the learned Sessions Judge.

11. In that view of the matter, in view of the decision in Cr.Misc.Appl.No.7715/2003, this revision application would not survive for decision on merit and therefore, the revision application is dismissed on the aforesaid ground only. Notice discharged.

(D. P. Buch, J.)

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